NOT TO BE INCLUDED
IN BOUND VOLUMES

LS
Newberry, SC

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ALTON H. PIESTER, LLC

and

Case 11-CA-21531

DARRELL CHAPMAN

ORDER CORRECTING

On January 26, 2009, the National Labor Relations Board issued an Order Denying Motion in the above-entitled proceeding. The January 26, 2009 order inadvertently refers to certain conduct as occurring on April 2, 2006, rather than April 2, 2007.

Accordingly, the attached corrected order is substituted for the order previously issued on January 26, 2009.

Dated, Washington, D.C., February 10, 2009.

By direction of the Board:

Lester A. Heltzer

Executive Secretary

NOT TO BE INCUDED
IN BOUND VOLUMES

LS
Newberry, SC

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

ALTON H. PIESTER, LLC

and

Case 11–CA–21531

DARRELL CHAPMAN

ORDER DENYING MOTION[1]

On September 30, 2008, the National Labor Relations Board issued a Decision and Order in this case,[2] finding that the Respondent violated Section 8(a)(1) by, on two occasions, impliedly threatening employees with discharge if they engaged in protected concerted activity, and by discharging employee Darrell Chapman because he engaged in protected concerted activity.

On October 13, 2008, the Respondent filed a Motion for Reconsideration and Stay of Enforcement. The motion requests that the Board reconsider the above findings.

Section 102.48(d)(1) of the Board's Rules and Regulations permits a party in "extraordinary circumstances" to move for reconsideration of a Board Order. There has been no showing of extraordinary circumstances here. The Respondent has not shown

---

1 Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

2 353 NLRB No. 33.

"material error," and it raises only arguments that were previously considered and rejected by the Board.

The Respondent contends, among other things, that the Board incorrectly held that there were no exceptions to the judge's finding that Chapman's conduct on April 2, 2007, was not so egregious as to lose the Act's protection. The Respondent asserts that it contested this finding in its answering brief to the General Counsel's exceptions.

However, cross-exceptions may not be asserted in answering briefs.[3] Section 102.46(d)(2) of the Board Rules and Regulations provides, "[t]he answering brief to the exceptions shall be limited to the questions raised in the exceptions and in the brief in support thereof." In any event, the Board considered whether Chapman's conduct on April 2, 2007, was so egregious as to lose the Act's protection. In doing so, it agreed with the judge that Chapman had not lost the Act's protection.[4] Therefore, we reject the Respondent's contention that the Board should reconsider its finding on that issue.

Accordingly, we shall deny the motion.

ORDER

IT IS ORDERED that the motion for reconsideration is denied.

Dated, Washington, D.C., January 26, 2009.

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

---

3 E.g., *Teddi of California*, 338 NLRB 1032 (2003).

4 Id., slip op. at 5.